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SUBJECT: Afghanistan: Aynak Copper Deposit: Request For World Bank
to Support Services of a Recognized International Legal Firm

This message contains SENSITIVE BUT UNCLASSIFIED information.
Please protect accordingly.

11. (U) This is an action request message - see para 5.

12. (SBU) Septel reported on the status of the competitive bidding process for the Aynak copper deposit. It also highlighted how important it is that the GOA gets this right. If the process stalls, there is any hint of non-transparent dealings, or either side is seen to have received an unfair bargain, the experience will have a chilling impact on an already difficult investment climate. In particular, if there is a perception among the Afghan people that a multinational company has "swindled them out of their national asset," it would significantly damage the prospects for future projects involving foreign investment. It would be difficult to reverse the harm.

13. (SBU) The competitive bidding process to date has gone well, in large part due to the World Bank's technical assistance for the Ministry of Mines (MOM). The World Bank has funded advisors to MOM and retained American consultants Gustavson Associates to guide MOM through the process. We understand, however, that the World Bank assistance, does not allocate resources to hire a legal firm to advise the MOM in the upcoming negotiations in June with the winning bidder. The selected bidder will undoubtedly bring a team of heavy-hitting international attorneys to the negotiating table. MOM will need equally competent international legal expertise to assist in the negotiations and to provide practical training to one or more Afghan attorneys. This is critical for ensuring that the GOA gets a fair bargain and is able to navigate the complex commercial, technical, and financial issues that bear on success.

14. (SBU) We believe that, as with the technical assistance on Aynak privatization received by MOM to date, the assistance for legal

support should also be provided by a multilateral development institution such as the World Bank. We do not believe that the USG should fund this assistance directly. Prior experience elsewhere has demonstrated that USG funding for legal consultants in a commercial negotiation process can be sensitive as it often leads to accusations of bad faith and bias in favor of U.S. interests.

15. (SBU) ACTION REQUEST: Given the importance to Afghanistan of the Aynak project in of itself and as a precedent for foreign investment and future development of its natural resources, Embassy requests that Washington agencies urge World Bank management to extend the Bank's technical assistance to include services of a recognized international legal firm familiar with mining transactions to advise MOM in its negotiations with the winning bidders.

Norland